



7020-02

## **INTERNATIONAL TRADE COMMISSION**

**Investigation No. 337-TA-710**

### **CERTAIN PERSONAL DATA AND MOBILE COMMUNICATIONS DEVICES AND RELATED SOFTWARE**

#### **INSTITUTION OF A FORMAL ENFORCEMENT PROCEEDING; DENIAL OF REQUEST FOR TEMPORARY EMERGENCY ACTION**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has instituted a formal enforcement proceeding related to the December 19, 2011, limited exclusion order issued in the above-captioned investigation, and has denied the complainant's request for temporary emergency action.

**FOR FURTHER INFORMATION CONTACT:** Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can

be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted the underlying investigation on April 6, 2010, based on a complaint filed by Apple Inc., and its subsidiary NeXT Software, Inc., both of Cupertino, California (collectively, "Apple"), alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain personal data and mobile communications devices and related software. 75 *Fed. Reg.* 17434 (Apr. 6, 2010). The complaint named as proposed respondents High Tech Computer Corp. of Taiwan ("HTC") and its United States subsidiaries HTC America Inc. of Bellevue, Washington ("HTC America"), and Exedea, Inc. of Houston, Texas ("Exedea"). The complaint alleged the infringement of numerous patents, including certain claims in U.S. Patent No. 5,946,647 ("the '647 patent").

On December 19, 2011, the Commission found a violation of section 337 as to claims 1 and 3 of the '647 patent, and no violation of section 337 as to any other asserted claims. 76 *Fed. Reg.* 80402 (Dec. 23, 2011). An opinion accompanied the notice. The Commission issued a limited exclusion order, the enforcement of which the Commission determined would not commence until April 19, 2012, in order to provide time for wireless carriers to transition to different products.

On June 4, 2012, Apple filed a complaint requesting that the Commission institute a formal enforcement proceeding under Commission Rule 210.75 to investigate a violation of the limited exclusion order, and seeking temporary emergency action under Commission Rule 210.77. The

complaint names as proposed respondents HTC and HTC America. On June 15, 2012, HTC and HTC America submitted a letter to the Commission opposing Apple's request for temporary emergency action, and seeking to narrow the scope of any enforcement action instituted based in part on Apple's waiver of certain arguments in the underlying investigation. On June 18, 2012, third-party T-Mobile USA, Inc. ("T-Mobile") filed a letter with the Commission arguing that any further Commission action should be accompanied by a new four-month transition period. Apple and HTC filed additional letters with the Commission on June 21 and 22, 2012, respectively.

Having examined the complaint seeking a formal enforcement proceeding, and having found that the complaint complies with the requirements for institution of a formal enforcement proceeding as set forth in Commission Rule 210.75, the Commission has determined to institute formal enforcement proceedings to determine whether HTC and HTC America are in violation of the December 19, 2011, limited exclusion order. The following entities are named as parties to the formal enforcement proceeding: (1) Apple; (2) respondents HTC and HTC America; and (3) the Office of Unfair Import Investigations.

As set forth more fully in the accompanying Order, the Commission has determined not to take temporary emergency action under Commission Rule 210.77.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.75 and 210.77 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.75 and 210.77).

By order of the Commission.

Lisa R. Barton  
Acting Secretary to the Commission

Issued: July 2, 2012

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